

1 NANCY NGUYEN SIMS (SBN 215869)
nancy.sims@bakermckenzie.com
2 MICHELLE CHUNG (SBN 312833)
michelle.chung@bakermckenzie.com
3 **BAKER & MCKENZIE LLP**
4 10250 Constellation Blvd., Suite 1850
Los Angeles, California 90067
5 Telephone: 310.201.4728
6 Facsimile: 310.201.4721

7 Attorneys for Petitioner
8 SKY ZONE FRANCHISE GROUP, LLC

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11

12 SKY ZONE FRANCHISE GROUP, LLC,
13 a Missouri limited liability company,

14 Petitioner,

15 vs.

16 COLLEEN FITZGERALD, an individual;
ALBANY FUN AND FITNESS, LLC, a
17 limited liability company; TAYLOR FUN
AND FITNESS, LLC, a limited liability
18 company; FAMILY FUN AND FITNESS,
LLC, a limited liability company;
19 KALAMAZOO FUN AND FITNESS,
LLC, a limited liability company;
SAGINAW FUN AND FITNESS, LLC, a
20 limited liability company, ROCHESTER
21 FUN AND FITNESS, LLC, a limited
liability company.

22 Respondents.
23
24
25
26
27
28

Case No. _____

**SKY ZONE FRANCHISE GROUP,
LLC'S PETITION TO CONFIRM
ARBITRATION AWARD**

*[Filed concurrently with Memorandum of
Points and Authorities; Declaration of
Michelle Chung; Proposed Order; and
Proposed Judgment]*

1 **PETITION TO CONFIRM ARBITRATION AWARD**

2 Petitioner Sky Zone Franchise Group, LLC (“Sky Zone” or “Petitioner”),
3 through its counsel, petitions this Court under Section 9 of the Federal Arbitration Act,
4 9 U.S.C. § 9, for an Order and Judgment granting Sky Zone’s Petition to Confirm
5 Arbitration Award issued by the Arbitrator in American Arbitration Association
6 (“AAA”) Case No. 01-20-0014-5321, dated February 14, 2022, and entering judgment
7 in favor of Sky Zone in the amount of \$1,251,523.73 as set forth in the Award, with
8 interest from the date of the entry of the judgment in accordance with 9 U.S.C. § 1961.

9 **THE PARTIES**

10 1. Petitioner Sky Zone, an owner and creator of recreational centers offering
11 trampoline walled playing fields (“Sky Zone Parks”), is in the business of granting
12 franchises to qualified persons and entities to operate the Sky Zone Parks. Sky Zone is
13 a limited liability company organized and existing under the laws of the State of
14 Missouri with its principal place of business in Los Angeles, California.

15 2. Respondent Colleen Fitzgerald (“Fitzgerald”) owned several Sky Zone
16 franchises, some in her individual capacity and others through limited liability
17 companies that she formed. On information and belief, Fitzgerald is a citizen and
18 resident of Florida.

19 3. Respondent Albany Fun and Fitness, LLC (“Albany Fun & Fitness”) is a
20 former franchisee of Sky Zone and operated a Sky Zone Park in Albany, New York.
21 Albany Fun & Fitness, on information and belief, is a Michigan limited liability
22 company with its principal place of business in Albany, New York.

23 4. Respondent Taylor Fun and Fitness, LLC (“Taylor Fun & Fitness”) is a
24 former franchisee of Sky Zone and operated a Sky Zone Park in Taylor, Michigan.
25 Taylor Fun & Fitness, on information and belief, is a Michigan limited liability
26 company with its principal place of business in Taylor, Michigan.

27 5. Respondent Family Fun and Fitness, LLC (“Family Fun & Fitness”) is a
28 former franchisee of Sky Zone and operated a Sky Zone Park in Brighton, Michigan.

1 Family Fun & Fitness, on information and belief, is a Michigan limited liability
2 company with its principal place of business in Brighton, Michigan.

3 6. Respondent Kalamazoo Fun and Fitness, LLC (“Kalamazoo Fun &
4 Fitness”) is a former franchisee of Sky Zone and operated a Sky Zone Park in
5 Kalamazoo, Michigan. Kalamazoo Fun & Fitness, on information and belief, is a
6 Michigan limited liability company with its principal place of business in Kalamazoo,
7 Michigan.

8 7. Respondent Saginaw Fun and Fitness, LLC (“Saginaw Fun & Fitness”) is
9 a former franchisee of Sky Zone and operated a Sky Zone Park in Saginaw,
10 Michigan. Saginaw Fun & Fitness, on information and belief, is a Michigan limited
11 liability company with its principal place of business in Saginaw, Michigan.

12 8. Respondent Rochester Fun and Fitness, LLC (“Rochester Fun & Fitness”) is
13 a former franchisee of Sky Zone and operated a Sky Zone Park in Rochester, New
14 York. Rochester Fun & Fitness is, on information and belief, a Michigan limited
15 liability company with its principal place of business in Rochester, New York.

16 9. Albany Fun & Fitness, Taylor Fun & Fitness, Family Fun & Fitness,
17 Kalamazoo Fun & Fitness, and Saginaw Fun & Fitness shall be collectively referred
18 to as the “Franchisees.”

19 10. The Franchisees and Fitzgerald shall be collectively referred to as the
20 “Respondents.”

21 **JURISDICTION AND VENUE**

22 11. This Court has subject matter jurisdiction over this matter under 28 U.S.C.
23 § 1332(a)(2), because the amount in controversy exceeds \$75,000, exclusive of
24 interests and costs, and there is complete diversity between the Petitioner and
25 Respondents.

26 12. Venue is proper in the United States District Court for the Central District
27 of California pursuant to 9 U.S.C. § 9 and 28 U.S.C. § 1391(b)(2) because this is the
28 judicial district in which the arbitration award sought to be confirmed was made. *See*

1 Declaration of Michelle Chung (“Chung Decl.”) filed concurrently herewith at ¶¶ 9-
2 10, Ex. 14, .

3 **CLAIM FOR RELIEF**

4 13. Under 9 U.S.C. § 9, this Petition seeks confirmation of the February 14,
5 2022 Award of the Arbitrator in AAA Case No. 01-20-0014-5321 (the “Final
6 Award”) arising out of the Arbitration between Sky Zone and Respondents, and
7 requiring Respondents to remit payment of \$1,032,506.49 in past royalty and
8 advertising fees, \$188,873.39 in attorney’s fees, \$20,278.85 in costs to Sky Zone, and
9 \$9,865 in arbitration costs for a total award of \$1,251,523.73. A true and correct copy
10 of the Final Award is attached as Exhibit 1.

11 14. From May 1, 2014, through July 1, 2016, Sky Zone entered into six
12 Franchise Agreements with either Fitzgerald in her individual capacity or a limited
13 liability company that Fitzgerald controlled. Fitzgerald also executed a personal
14 Guarantee in connection with each Franchise Agreement. True copies of the
15 Franchise Agreements are attached as Exhibits 1, 3, 5, 7, 10, 12 to the Chung Decl.
16 True Copies of the related Guarantees are attached as Exhibits 2, 4, 6, 8, 11, 13 to the
17 Chung Decl.. A true and correct copy of the assignment of the Saginaw Franchise
18 Agreement is attached as Exhibit 9 to the Chung Decl.

19 15. Section XVI of the Franchise Agreements contain an arbitration provision
20 mandating that any and all disputes between the parties arising out of or related to the
21 Franchise Agreement shall be fully determined exclusively by binding arbitration. *See*
22 *Chung Decl.*, Exs. 1, 3, 5, 7, 10, 12, § XVI.B.

23 16. The Guarantees also requires the parties to resolve disputes relating to the
24 Franchise Agreements by arbitration. *See Chung Decl.* Exs. 2, 4, 6, 8, 11, 13, p. 2.

25 17. Section XVII of the Franchise Agreements provides that “[i]n the event
26 of any court or arbitration proceeding, the non-prevailing party will reimburse the
27 prevailing party for all of the prevailing party’s cost and expenses,
28 including...attorneys’ fees[.]” *See Chung Decl.*, Exs. 1, 3, 5, 7, 10, 12, § XVII.K.

1 18. With five to seven years remaining on the Franchise Agreements in early
2 2020, Respondents abandoned the Sky Zone Parks associated with the six Franchise
3 Agreements. On March 11, 2020, Sky Zone upon discovering the abandonment
4 terminated the Franchise Agreements and requested that Respondents comply with
5 their post-termination obligations. The parties were unable to resolve issues related
6 to their respective rights under the Franchise Agreement and Sky Zone submitted an
7 arbitration demand on August 19, 2020, in the American Arbitration Association
8 against Respondents.

9 19. The parties, through counsel, agreed to arbitrate before AAA in Los
10 Angeles, California pursuant to the Franchise Agreement that permits parties to
11 mutually agree on the location. *See* Chung Decl., 1, 3, 5, 7, 10, 12, § XVI.B. The
12 parties chose and appointed Charles G. Miller as a mutually acceptable arbitrator
13 through AAA.

14 20. Sky Zone brought claims for Breach of Franchise Agreement and
15 Guarantees, and sought a monetary damages for past due and future royalty fees based
16 on Respondents' obligations under the Franchise Agreements. *See* Chung Decl., Exs.
17 1, 3, 5, 7, 10, 12, § XI.C. Sky Zone also requested an award of its costs and expenses
18 including attorneys' fees as permitted by the Franchise Agreements. *See id.* § XVII.K.

19 21. Sky Zone moved for partial summary judgment on its claims for Breach
20 of Franchise Agreements and Breach of Guarantees on October 29, 2021. The
21 Arbitrator granted the partial summary judgment motion on December 1, 2021,
22 awarding \$1,032,506.49 to Sky Zone and against Respondents. The Arbitrator's
23 Order Granting Partial Summary Judgment articulated that no hearing would be
24 necessary, and directed Sky Zone to file a motion for attorneys' fees and costs. Sky
25 Zone's motion for attorneys' fees and costs was briefed and granted on February 14,
26 2022. *See* Chung Decl., ¶ 11, Ex. 15.

1 22. The Arbitrator issued the Final Award, (Ex. 16), on February 14, 2022,
2 and awarded to Sky Zone and against Respondents \$188,873.39 in attorneys' fees,
3 \$20,278 in costs, and \$9,865 in American Arbitration Association fees and expenses.

4 23. The Franchise Agreements provide that "[t]he award and decision of the
5 arbitrator will be conclusive and binding upon all parties, and judgment upon the
6 award may be entered in any court of competent jurisdiction, and each waives any
7 right to contest the validity or enforceability of such award." Chung Decl., Exs. 1, 3,
8 5, 7, 10, 12, § XVI.B.

9 24. To date, the payment to Sky Zone set forth in the Final Award remains
10 due and outstanding.

11 25. Respondents have not filed or served any notice of a motion to vacate,
12 modify, or correct the Final Award in accordance with 9 U.S.C. § 12.

13 26. This Petition has been brought within one year after the Final Award was
14 issued. The Final Award must be confirmed in accordance with 9 U.S.C. § 9 because
15 the Final Award has not been vacated, modified, or corrected under 9 U.S.C. §§ 10-
16 11.

17 27. Sky Zone has not made any prior application to this Court or any other
18 court for the relief requested in this Petition.

19 WHEREFORE, Petitioner Sky Zone respectfully requests that the Court enter
20 an Order and Judgment granting Sky Zone's Petition to Confirm Arbitration Award,
21 entering judgment in favor of Sky Zone in the amount of \$1,251,523.73 as set forth
22 in the Final Award, with interest from the date of the entry of the Judgment in
23 accordance with 28 U.S.C. § 1961. Petitioner Sky Zone also respectfully requests the
24 Court award Sky Zone the attorneys' fees and costs associated with bringing this
25 Petition.

1 Dated: January 6, 2023

BAKER & MCKENZIE LLP

2
3 By: /s/ Nancy N. Sims

4 NANCY NGUYEN SIMS

MICHELLE CHUNG

5 Attorneys for Petitioner

6 SKY ZONE FRANCHISE GROUP, LLC